



**APPROVED MINUTES  
CITY OF SCOTTSDALE  
CHARTER REVIEW TASK FORCE**

**MONDAY, SEPTEMBER 28, 2009**

**CITY HALL KIVA  
3939 N. DRINKWATER BOULEVARD  
SCOTTSDALE, AZ 85251**

**PRESENT:** Steven J. Twist, Chair  
Susan Bitter Smith  
Jim Derouin  
Cindi Eberhardt  
Alan Kaufman  
Charlie Smith  
Lisa Johnson Stone

**STAFF:** Carolyn Jagger, City Clerk  
Sherry Scott, Deputy City Attorney  
Brent Stockwell, Senior Advisor

**Call to Order / Roll Call**

Chairman Twist called the Charter Review Task Force regular meeting to order at 5:00 P.M.  
Roll call confirmed the presence of Task Force members as noted.

**1. Approval of Minutes - August 31, 2009**

**MOTION AND VOTE:**

CINDI EBERHARDT MOVED TO APPROVE THE MINUTES OF THE AUGUST 31, 2009 MEETING. ALAN KAUFMAN SECONDED.

MOTION PASSED 7-0.

**2. Public Comment**

There was no public comment.

**3. Discussion and possible action regarding revising the process and calendar to be used by the Task Force to review the City Charter and make recommendations to the City Council**

Chairman Twist explained that at the Sept. 14<sup>th</sup> meeting, the Task Force had asked Brent Stockwell to update documents to schedule all meetings in the City Hall Kiva Forum and have them broadcast live.

**MOTION AND VOTE:**

CHARLIE SMITH MOVED TO APPROVE THE REVISED DOCUMENTS TO THE TASK FORCE PROCESS AND SCHEDULE. CINDI EBERHARDT SECONDED.

MOTION PASSED 7-0.

**4. Discussion and possible action regarding recommendations to the City Council regarding possible amendments to the Scottsdale City Charter**

Chairman Twist noted that Alan Kaufman performed a review, clarified the language and offered thoughtful suggestions for revision of Article Nine, Option B1, as did Sherry Scott, Deputy City Attorney.

Alan Kaufman gave an overview of his review of the Maxwell versus Fleming case and the revisions he proposed for Option B1. He stated he is confident that Option B1 is a perfectly permissible way to conduct an election and is allowed under the State charter laws.

Susan Bitter Smith thanked Alan Kaufman for his work. Ms. Bitter Smith asked Carolyn Jagger, City Clerk, what the practical implications are for the Clerk's office and if the County elections department can actually produce this information and if so, how quickly. Ms. Bitter Smith stated that the Task Force needs to better understand Options B and B1 and their respective impacts to the process here at Scottsdale. Ms. Bitter Smith asked further, under what circumstances would a hand count be necessitated under Options B and B1, and what do they do for the speediness of the election process. Carolyn Jagger explained that what she believes Mr. Kaufman has done is take some language they've been working on and enhanced it by making it more clear. Ms. Jagger stated they are able to get total votes from the County in an election and that they use the formula in Option B1 to determine who has won an election. Ms. Jagger referred the Task Force members to a document that staff created to give an overview of the information they received from the County, such as votes each candidate received, total votes, and the over and under votes. Ms. Jagger also stated that the calculations in Option B1 are more clear than those in Option B.

Susan Bitter Smith asked Mr. Jagger to please clarify under what circumstances a hand count would be necessary and what triggers that mechanism. Carolyn Jagger, City Clerk, stated that there is nothing in Options B or B1 would require a hand count, explaining that a hand count is used when there is a challenge to an election and there is nothing in the options to speak to that.

Chairman Twist asked Cathy Connolly, who was seated in the audience, to speak on this issue. Ms. Connolly explained that Mr. Kaufman has accomplished the feat of drafting around the problem, and that this may be something that other cities adopt as well. Ms. Connolly stated

that there shouldn't be any questions if Mr. Kaufman's proposed amendment language goes forward.

Chairman Twist thanked Cathy Connolly for her comments and thanked Alan Kaufman for the good job of reviewing and clarifying the language in Option B1.

Cindi Eberhardt thanked Alan Kaufman, as well, and explained that the language he proposed narrows the scope and eliminates the confusion discussed on Options B and B1 during the last meeting.

MOTION:

CINDI EBERHARDT MOVED THAT ARTICLE NINE, "OPTION B1," CHANGING THE METHOD FOR CALCULATING THE MAJORITY OF VOTES NEEDED FOR A CANDIDATE TO BE ELECTED AT THE PRIMARY ELECTION, BE APPROVED. LISA JOHNSON STONE SECONDED.

Charlie Smith stated that he will vote against the motion and believes its bad policy for the City because it could allow people to get elected by only 40 percent of the voters. Mr. Smith acknowledged the artful wording offered in the proposed language but stated that he will vote against it.

Susan Bitter Smith said she usually agrees with Mr. Smith but that the problem is that elections have changed for Scottsdale. Ms. Bitter Smith stated that because of the State statute changing the election circumstances to the month of September in Scottsdale; it has limited the ability for non-incumbents to run. Ms. Bitter Smith stated that this event is a mixed blessing, in that it fixes one problem and creates another, concluding that Option B1 is a better answer but not a perfect one.

Jim Derouin stated that he is ambivalent about the proposed amendment language and that he sees both sides. Mr. Derouin explained that it is bothersome that we could we declare someone elected by majority of votes cast but not by the majority of voters.

Chairman Twist explained that if a person chooses to not vote or to undervote in a race, they take themselves out of the main stream of the decision makers, stating that it's unfair to diminish their vote, but also unfair to overvalue their vote. Chairman Twist expressed how important it is for people to vote fully on issues.

Cindi Eberhardt stated that the challenge is that there isn't a perfect answer here, noting that the ballots cast language is the alternative that speaks to Scottsdale situation of last year and reflects the votes in that category.

Chairman Twist expressed that he believes it allows more certainty in outcomes, and thinks that's a good thing for the voters in Scottsdale.

Alan Kaufman explained that in this past election, it was the first one we've had on a consolidated basis and that we had tremendous turn out from people that didn't vote in the Scottsdale election. Mr. Kaufman stated that the proposed language was designed to ensure that people who do vote in Scottsdale elections are heard loud and clear and people who choose not to vote on the Scottsdale election or are here for other reasons, are not afforded the opportunity to influence the election.

Lisa Johnson Stone expressed that undervoting is a voice also, and just a different way of recognizing votes.

VOTE:

MOTION PASSED 6-1. (CHARLIE SMITH DISSENTING)

Chairman Twist explained that having gone through all of the proposed changes to Article 9 presented to the Task Force, it would be appropriate to take one final vote to ratify the approved amendments and make a recommendation to the City Council.

MOTION AND VOTE:

CHARLIE SMITH MOVED THAT OPTIONS A, C, D, AND E, OF ARTICLE NINE, THAT WAS APPROVED AT THE SEPTEMBER 14<sup>TH</sup> MEETING, AS WELL AS OPTION B1, (BUT NOT B) APPROVED AT TONIGHT'S MEETING, BE FORWARDED TO THE CITY COUNCIL. JIM DEROUIN SECONDED.

MOTION PASSED 7-0.

Brent Stockwell clarified the process that staff will use going forward, explaining that staff will now create an ordinance that the City Council could adopt, which would incorporate the amendments the Task Force recommends making. The City Council would then submit to voters for their consideration.

Chairman Twist asked the Task Force to turn their attention to Articles 1, 2 and 3 and their respective staff recommendations. There were no changes proposed in Sections 1 or 2.

Chairman Twist drew the Task Force members' attention to the City Attorney's recommendations for Section 3, Subsection B. Chairman Twist felt they raised a good point about the definitiveness of words like *prevent* and *prohibit*, which may promise more than the City can deliver. Chairman Twist offered the word *limit* as a one-word substitute; which would be in line with what the recommendation is to say *help reduce*.

Charlie Smith asked Sherry Scott, Deputy City Attorney, about the implication that the Charter provision can be read to be in conflict with the City's flood plain ordinance. Sherry Scott explained that the flood plain ordinance really has a design standard in it, which states that buildings need to be designed to sustain a 100-year flood event. Ms. Scott stated that the Charter will take precedence over the flood plain ordinance and that the flood plain ordinance is trying to interpret the intent of the Charter, as there is no way to say we are insuring that there will never be a flood in Scottsdale.

MOTION:

JIM DEROUIN MOVED THAT IN ARTICLE 1, SECTION 3, SUBSECTION B, BE AMENDED TO SUBSTITUTE THE WORD "LIMIT" FOR THE WORD "PREVENT" IN FRONT OF THE WORDS "THE LOSS OF", AND AGAIN SUBSTITUTE THE WORD "LIMIT" FOR THE WORDS LATER IN THAT SENTENCE, "PREVENT AND PROHIBIT." CINDI EBERHARDT SECONDED.

Charlie Smith asked how the proposed language will affect the City's liability. Sherry Scott, Deputy City Attorney, explained that citizens become frustrated when they find the City hasn't

protected them against engineering plan mistakes and they experience flooding. Ms. Scott explained that the proposed language addresses this issue and noted that it had not come up in past litigation for the City.

VOTE:

MOTION PASSED 7-0.

Chairman Twist asked the Task Force members to now review and address the staff recommendations, directing them to the recommendation for Subsection C, on flood plain hazards.

Susan Bitter Smith asked for clarification on the difference between a map and a zoning map. Sherry Scott, Deputy City Attorney, explained that generally, a map is a GIS map, which contains a great deal of information about easements, plats, utilities, and many other things. Ms. Scott explained that when this provision was passed, she didn't think the City had GIS mapping, so she believed this referred to zoning maps. Ms. Scott explained that zoning maps show what properties are zoned to be and that the zones regulate the property's use.

Susan Bitter Smith agreed with Sherry Scott's explanation and suggested they insert the word *zoning* before *maps* in the regulation.

There was extensive discussion on the use of maps in Subsection C on flood plain hazards, as well as Subsection D on flood plain obstructions and hazards.

MOTION AND VOTE:

SUSAN BITTER SMITH MOVED THAT ARTICLE 1, SECTION 3, SUBSECTION C, BE AMENDED TO INSERT THE WORD "ZONING" BEFORE "MAP", AND SUBSECTION D TO INSERT THE PHRASE "FLOODPLAIN OBSTRUCTION OR FLOODING HAZARD" AFTER "NUISANCE" AND IN SUBSECTION E, STRIKE ALL LANGUAGE EXCEPT "TO PRESCRIBE THE PLACE AND MANNER A NOTICE IS TO BE PUBLISHED." ALAN KAUFMAN SECONDED.

MOTION PASSED 7-0.

Chairman Twist asked the Task Force members to address Subsections G and H.

Charlie Smith asked Sherry Scott, Deputy City Attorney, if the one percent public arts donation from the developers' Charter authority exists someplace else in the document other than Subsection G. Sherry Scott stated that she did not recall seeing this elsewhere in her Charter review, but offered that it is under a City ordinance, near where the cultural council is addressed in the City code.

Charlie Smith asked if there was any interest in making it a part of the Charter. Ms. Scott responded by saying that it couldn't hurt.

Jim Derouin asked if it wouldn't be better in Subsection G to substitute *or for and* between the words Arizona and federal law. Sherry Scott responded that either word worked and that she had no objection to changing it, stating they could use an *and/or* combo to eliminate the confusion.

There was further discussion on the use of *or*, *and*, as well as *and/or*.

Chairman Twist asked the members to address Subsection H.

Sherry Scott explained that the City has long had in the Charter language stating that it cannot require architectural review for a single family dwelling, adding that it can be very difficult to have to go through the review board for your family residence. Ms. Scott stated that earlier this year, R17 discussions brought new possibilities and challenges forward, due to the remodeling issues of south Scottsdale homeowners, as they have a particular set of challenges for remodeling because of their zoning. Ms. Scott gave a brief overview of the City Council's perspective on this issue, as well as the Planning Department's concerns. She stated that she was not recommending a side here but acknowledged it was a difficult problem to address, and urged the Task Force members to review it carefully.

There was extensive discussion on the definition of accessory buildings and zoning code.

Susan Bitter Smith stated there is a long history of Scottsdale being ahead of curve for design monitoring, but felt this is a policy issue to be fixed by ordinance, rather than in the City's Charter.

Sherry Scott, Deputy City Attorney, clarified that when the City Council was considering single family dwelling plan review, the issue was not to monitor exterior paint colors but rather give homeowners more flexibility and authority to do more than the zoning regulations allowed them to do. Ms. Scott stated that the intent was to provide more flexibility for homeowners, not provide more regulation. Ms. Scott also explained that future review may not fit with what the current City Council's view is on this issue.

Susan Bitter Smith stated that, having heard the Council's conversation on R17, she still believes that policy change would be an ordinance issue, not a charter issue.

With no further proposed amendments to Subsection H, Chairman Twist asked the Task Force members to address Subsection I.

Alan Kaufman stated that he couldn't agree more with the City Attorney's proposed changes, noting there is often confusion because the City uses one term and the State uses another term; making it difficult for most people to interpret. Mr. Kaufman stated that what the City Attorney's office proposed for Subsection I was consistency and clarity, making it easier to understand, which he is in favor of.

Charlie Smith requested some clarification on the specific difference between a "character area plan" and "a specific area plan." Alan Kaufman explained that the State's term is "specific area plan" and that "character area plan" is something the City uses.

Chairman Twist asked the members to address Subsection K.

There was extensive discussion on changing the wording from ecology to environment, as well as the liberal construction rule.

#### MOTION AND VOTE:

JIM DEROUIN MOVED THAT ARTICLE 1, SECTION 3, SUBSECTION G BE AMENDED ADDING THE PHRASE "THE EXTENT ALLOWED BY ARIZONA AND/OR FEDERAL LAW" AFTER THE WORD "TO" AND ADDING AFTER THE WORD "OR" ", WHERE ALLOWED BY CITY ORDINANCE," AND AFTER THE WORD "FURNISHING" ", THE FOLLOWING" NO CHANGES TO SECTION "H", IN SUBSECTION I AFTER THE PHRASE "SPECIFIC PLANS" ADDING "AND/OR CHARACTER PLANS" AND IN SUBSECTION K STRIKING THE PHRASE "AS IT MAY RELATE TO THE ECOLOGY." ALAN KAUFMAN SECONDED,

MOTION PASSED 7-0.

Chairman Twist asked the members to address Article 1, Section 3's last paragraph and review the City Attorney's comments.

There was discussion on whether there was a need for amending this section.

Brent Stockwell explained that the proposed language is consistent with the model city charter and read an excerpt of what is stated in the 8<sup>th</sup> edition of the model city charter.

Charlie Smith stated that unless there is a compelling reason to change the section, he didn't think we should propose any change.

Jim Derouin stated that he would work with staff to clarify language in Article 1, Section 3, Subsection A, relating to the role of condemnation, eminent domain, and waiver rights under existing Prop 207, and bring that language back at a later date.

Susan Bitter Smith asked staff to provide information regarding the City's current practice regarding Prop. 207 waivers.

## **5. Review, discuss, and possibly amend draft agenda for October 5, 2009 meeting**

Chairman Twist asked the Task Force members to continue their discussion of Article 1, section 3, and the proposed amendments from the Orange Coalition at the beginning of the next meeting.

Chairman Twist invited the public to attend the next meeting or to offer written or online comments to the Task Force so that a fair debate takes place on the important issues raised in the amendments proposed by the Orange Coalition.

Charlie Smith stated that at the end of Article 2 you find the first City Council-appointed position, which is a unique place in the Charter. Mr. Smith felt it would be wiser to take up all Council-appointed positions at once or consider moving this reference someplace else in the Charter, asking that the Task Force look at all the Council-appointed positions at one time.

Susan Bitter Smith and Cindi Eberhardt asked for a staff presentation on what is consistent with State law and what is going beyond State law with regard to the Orange Coalition's proposals, and further, how they are consistent with other cities in Arizona.

Brent Stockwell explained that he recalled from the Orange Coalition's presentation at the first meeting that this is the first time these changes are being proposed to a City, so no other cities currently have them. Mr. Stockwell further explained that the City Attorney's Office always looks

at proposals to be in line with State law and that it will be prudent for the Task Force to continue to analyze any proposals it makes to ensure they are consistent with State law. Mr. Stockwell urged members to look for language that unduly restricts the City in the charter.

Susan Bitter Smith mentioned that she would be participating telephonically in the next meeting. She also asked for a discussion about the multi-member districting proposal within the discussion on Article 2.

**Adjournment**

With no further business to discuss, the meeting was adjourned at 7:00 P.M.

**SUBMITTED BY:****Linda Pellegrini**

Administrative Secretary

**REVIEWED BY:****Brent Stockwell**

Senior Advisor

Officially approved by the Charter Review Task Force on October 26, 2009.